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COMPLEXITY IN THE DETERMINATION OF CHILD ABUSE: A STATISTICAL AND RIGHTS BASED APPROACH

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Every year more than 3.6 million referrals are made to child protection agencies, which involve more than 6.6 million children.¹ A determination of child abuse is a complex process for both courts and child protective service workers.² When an allegation of suspected child abuse is made findings may, or may not, lead to court action. Courts rely upon accurate determinations of abuse. While some cases are clear-cut, many are not. The lack of clear-cut data and legal findings, however, does not dissuade the press and public from making determinations of whether children are being adequately protected, and whether parents are being mistreated in child abuse cases. This results in the generation of many conversations on the issue without people considering the genuine complexities of these cases.^{3 4} Child Protective Services

¹ *Child Abuse Statistics and Facts*, CHILDHELP, <https://www.childhelp.org/child-abuse-statistics/> (last visited Aug. 21, 2017).

² *Legal Issues in Child Abuse Cases*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/courts/processes/can/> (last visited Aug. 21, 2017).

³ Douglas Besharov, *Child Protective Services Liability: When the System Fails*, TRIAL, 30, 32-35 (1994).

employees are placed in a difficult situation; if these employees fail to identify that a child is at risk they are deemed incompetent, and if they allege that a child is at risk when their parents disagree, they are also deemed incompetent.⁵ Seldom are they acknowledged to be heroes when they make the “right” decision. This essay examines the problems faced in the determination of child abuse and uses a statistical model to explore best-practices in such challenging situations.

DAMNED IF YOU DO

Child protective service (CPS) agencies are required to investigate when an allegation of abuse is made, which is a tough job. Most parents do not want to be accused of being an abuser. A natural tension exists between the parents and the individuals who are sent to find out whether the parents are doing a good job keeping their children safe. How do the workers know for sure if a child is being abused? Sometimes evidence is abundantly clear - but often it is not. Workers will hear conflicting stories, look at facts that sometimes do not fit together well, and they try to make sense out of what they learn. As Erving Goffman indicates in his book, *The Presentation of Everyday Life*,⁶ it is likely that even abusive parents will engage in impression management to appear to be good and caring towards their children. So if you are the CPS worker, how can you know when abuse occurs, and what is the best course of action to follow when you are unsure?

Parents have more power than children in our society, and when under attack parents may find that the best defense is a good offense.⁷ Allegations that child protective service workers are not doing their job are common, with critics charging that children are unnecessarily removed from caring homes,

⁴ *Parental Rights Under the Microscope as Child Abuse Accusations Mount*, FOXNEWS (Feb. 7, 2002), <http://www.foxnews.com/story/2002/02/07/parental-rights-under-microscope-as-accusations-child-abuse-mount.html>.

⁵ MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY; DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* (1980).

⁶ ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (1959).

⁷ Kimberly Bundy-Fazioli, Katharine Briar-Lawson & Eric Hardiman, *A Qualitative Examination of Power between Child Welfare Workers and Parents*, 39 *BRIT. J. OF SOC. WORK* 1447, 1447-1464 (Apr. 2008).

placements may not be safe, and children may be injured or die when under the care of others.⁸ Many court cases have been brought by parents who allege that the state took their child unfairly, that CPS workers overstepped their professional boundaries, made mistakes in their investigation, and both parent and child rights were violated as a result.⁹ There are several organizations and many Internet sites to connect disgruntled parents with other critics and legal resources, where they can gain support for their view that child protective service organizations do not work properly. Organizations like Fight Child Protective Services¹⁰ allege on their website that workers have “devastated and destroyed hundreds of thousands of families” in America “leaving a trail of broken hearts, broken dreams, and shattered childhoods,” and use unconstitutional laws to “rip children away from their loving parents,” “break asunder God-given, natural, parent-child bonds”, and force their beloved children into foster homes or be put up for adoption.¹¹ Groups like Justice4Families,¹² a parent’s support group comprised of people fighting to get their removed children back, publicly protest what they regard as the incompetence of social workers, who are supposed to protect children from death and injury but fail to do so. The organization Parental Rights¹³ seeks to strengthen parent rights, and criticizes the role of outside organizations and agencies whose involvement is seen as inhibiting parental authority. They are seeking the addition of a parental rights constitutional amendment that would supersede

⁸ DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

⁹ Alyson Oswalt, *They Took My Child! An Examination of the Circuit Split Over Emergency Removal of Children from Parental Custody*, 53 CATH. U. L. REV. 1161, 1163 (2004).

¹⁰ Linda Martin *Fight CPS: Child Protective Services – CPS False Accusations*, FIGHT CPS, <http://fightcps.com/> (Apr. 4, 2017) (discussing people who feel parental rights are being violated by child protective service organizations).

¹¹ *Id.*

¹² JUSTICE4FAMILIES, <http://www.justice4families.org/about/our-work/> (last visited Aug. 21, 2017) (discussing dedication to bringing judges and lawyers to justice by any means possible and ending their reign of terror against America’s fathers, single mothers, families and children).

¹³ PARENTAL RIGHTS, <http://www.parentalrights.org/> (last visited Aug. 15, 2017) (stating that its mission is to protect children through adoption of the Parental Rights Amendment to the US Constitution and through state laws supporting fundamental parental rights).

any child rights legislation. Attacks on child protection investigators range from accusations that they have not done enough to accusations that these workers are too invasive.

Parents are increasingly likely to seek legal action against workers and agencies who accuse them of neglect or abuse. It is possible that child abuse may be reported when abuse has not occurred. Additionally, it is possible that parents are found to be abusive when they are not. Further, it could be the case that children are abused, but the abuse is never reported, or that abuse isn't conclusive and the child stays in a risky situation. Even professionals may not agree on whether maltreatment has occurred, as in the case of Justina Pelletier, a teenager who was ordered to stay at Boston Children's Hospital for over a year as officials tried to sort out whether she had a physical problem, a psychiatric problem, or whether her parents sought adequate care for her or were actually part of her problem and may have caused her abuse.¹⁴ This case received national publicity as her parents alleged they had her best interests and the hospital felt they did not.¹⁵ A lawsuit against the hospital is currently pending.¹⁶

Court cases and research indicate that sometimes children are perceived to be abused when maltreatment is not substantiated. The Illinois Belleville News-Democrat¹⁷ reporters analyzed child abuse investigation errors made by the Illinois Department of Children and Family Services that lead to parents being wrongly placed on the state's Central Register of abusers. They allege that flawed investigations are much higher than previously assumed. This drew significant attention by many interested parties in the state who joined together to address the problem.¹⁸

¹⁴ Michael Levenson, *Parents of Justina Pelletier sue Boston Children's Hospital for Negligence*, BOS. GLOBE, Feb. 25, 2016, <https://www.bostonglobe.com/metro/2016/02/25/parents-justina-pelletier-sue-boston-children-hospital-for-negligence/jCrlgTQBVikJtokEnlFBmN/story.html>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ George Pawlaczyk & Beth Hundsdorfer, *Illinois DCFS Lethal Lapses: 51 Botched Cases, 53 Children Dead*, BELLEVIEW NEWS DEMOCRAT, <http://www.ejfi.org/family/family-118.htm> (last modified Apr. 11, 2015).

¹⁸ FAMILY DEFENSE CENTER, *Thousands of Illinois families—with the support of leading conservative and liberal groups—Seek United States Supreme Court's Attention to*

The agency provides countless services to thousands of children each year, and while child protective service agencies could almost always do better when they have more staff and resources, nonetheless they are effective in saving lives and protecting children.¹⁹ When problems occur, changes in how cases are handled have resulted because of such allegations.^{20 21}

There seems to be sufficient evidence to believe that CPS workers and the courts have sometimes accused innocent parents are of child maltreatment. It is unclear, however, the degree to which false accusations occur. It is unknown if abuse or maltreatment has actually occurred, especially when there is a lack of direct evidence. Documentation of abuse is particularly challenging when abuse is ambiguous or cases are difficult to substantiate one way or the other, or may have actually occurred but aggressive lawyers find legal loopholes to have the case thrown out. It is also challenging to prove when abusive parents are well-defended and expend great effort to present themselves, in and out of court, as good people who are victims of inept human service systems. Child protective service workers may be accused of improprieties, even when they have done their work adequately.

DAMNED IF YOU DON'T

If a child is being abused and workers don't identify and address it, this is a serious problem, especially when a child dies. There are several situations in which the child protective service agencies or workers are blamed for not doing enough to protect children. In the first instance, CPS doesn't investigate potential abuse because they don't know about it. While certain

Child Welfare Agency Abuses, (Feb. 13, 2008), http://www.familydefensecenter.net/images/stories/dupuy_press_release_2-13-08.pdf.

¹⁹ DEPT OF CHILD. AND FAMILY SERV. ILL., *Reports of Child Abuse and Neglect: Appendix G - Child Endangerment Risk Assessment*, May 15, 2013, https://www.illinois.gov/dcf/aboutus/notices/Documents/Procedures_300_Appendix_C_to_L.pdf.

²⁰ Philip Garnier & Martin Nieto, *Illinois Child Endangerment Risk Assessment Protocol Evaluation: Impact on Short-term Recurrence Rates - Year Five*, CHILD. AND FAMILY RES. CTR. 30 - 39 (2001).

²¹ Hyun-Ah Kang & John Poertner, *Inter-rater Reliability of the Illinois Structured Decisions Support Protocol*, CHILD ABUSE & NEGLECT 30 (2006) Aug. 29, 2002, at 679-680.

professions are required to be mandated reporters of suspected abuse, the reality is that not all do. Family, friends and neighbors may observe maltreatment but choose not to report it for a variety of reasons; they may be in denial of it, not recognize actions as abusive, think that they can address the problem informally, or be afraid for their welfare, or the welfare of the child, if they do report suspected abuse to the authorities. If no formal reports are made to CPS, the organization does not have the authority to investigate. They cannot be blamed for failure to investigate if they never received a complaint to investigate. In a second type of situation, reports are made but the concerns expressed do not rise to the level to warrant an in-depth inquiry. Rather, a surface review is made looking for indicators on whether they should dig deeper. If investigators can't find them, they go no further. This is especially the case in agencies where there are few workers and many cases or reports to manage. If multiple reports of abuse have been made over time it provides investigators with more ammunition to pursue the case. When pursuing it, what a worker can do depends entirely upon the quality of evidence. If evidence is inconclusive or ambiguous, reports are unsubstantiated, and there is no documentation to support a determination of abuse, then the worker is at risk of overstepping bounds and getting in trouble. To the worker, if the data doesn't rise to the level that is considered abusive, they do not have the authority to pursue it for fear of such actions being perceived to be personally-motivated or analogous to a witch-hunt. If it turns out that there is abuse occurring and a worker doesn't do something or enough, they are damned, especially if the child is injured or killed.

Consider the Massachusetts case of Baby Doe-Bella Bond, a murdered two-year-old child whose body had been put into a trash bag and thrown into the ocean.²² Her body remained unclaimed for three months after it was washed ashore, there had been child protective service investigation into the household in the past and no one had followed up to report that Bella was

²² Jill Lepore, *Baby Doe: A Political History of Tragedy*, THE NEW YORKER, Feb. 1, 2016, http://www.newyorker.com/magazine/2016/02/01/baby-doembid-gnep&intcid=gnep&google_editors_picks=true.

missing.²³ Public outrage occurred as they questioned how this could happen and the agency was charged with negligence. However, family and friends of Bella did not actively report her absence, so the CPS workers were not the only ones responsible.²⁴ Workers were fired, administrative changes were made, and an undercurrent of ambiguity loomed because there had been no recent indications that the child was in that much risk.²⁵ In California, CPS officials responded to two dozen abuse or neglect referrals involving Shaun and Delylah Tara, 6 and 3, respectively, and their 9-year-old half-sister.²⁶ Officials determined that many of the reports were unfounded or inconclusive.²⁷ When the children were found dead, the agency was confronted with not doing their job properly.²⁸ They did have regular contact with the family but they could not obtain enough court-worthy evidence to remove the children from their caregiver.

In every state across the nation, CPS agencies have been attacked because workers have done too much, or for not doing not enough to protect the children. The list of infractions are endless – substance abusing parents who are not paying attention to the children, boyfriends who shake or brutally punish children, those who are kidnapped by noncustodial parents, the almost impossible prosecution of verbal and emotional abuse, the challenges of proving child sexual abuse, people who think that hitting a child constitutes good discipline, the appropriateness of leaving a child alone or in charge of younger siblings, those who believe that if you ‘spare the rod’ you ‘spoil the child’, not to mention the countless people who were abused as children and think that their inappropriate parenting strategies are normal. There are many cultural differences and religious differences that complicate the determination of abuse.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Matthais Gafni, *CPS Failures*, MERCURY NEWS, Aug. 11, 2016, http://www.mercurynews.com/news/ci_29714198/cps-failure-short-lives-shaun-and-delylah-tara.

²⁷ *Id.*

²⁸ *Id.*

Sometimes children's behaviors are used to justify maltreatment against them, as if the children were responsible for their abuse. Proving abuse, especially in well-defended parents, is far from easy.

CAUGHT IN THE MIDDLE

In child abuse cases, everyone seems to be caught in the middle. Children, even those who are abused, tend to love their parents, want to stay at home and will sometimes change their stories to protect and defend them. Parents, even those who are abusive, love their children, don't want to gain a reputation of being a bad parent, and few want to have their children removed. CPS workers are caught because they are trying to protect children, follow the law, respect parental rights, try to keep the family intact whenever possible, prevent future tragedy for children, and avoid getting sued or fired for not following protocol. The complexity of managing such a situation is enormous. Protecting children's rights may sometimes mean not protecting the rights of adults. There is a fine line between making sure children are safe and protecting the constitutional rights of parents. Children are often viewed as parental property and parents think they can say and do what they want to them, within reason. The question is what is reasonable? Workers must have parental consent to talk with children alone, which may alter the testimony of the child. They usually cannot remove a child, even one in an awful situation, without a court order.²⁹

Child protective services are liable if they if they refuse to accept a report for investigation, if they conduct an inadequate investigation, for failure to put a vulnerable child into protective custody, for wrongful removal of a child, conducting unnecessarily intrusive investigations, making slanderous statements in an investigations, disclosing confidential information, and malicious prosecution. Inherent in this list lies a key problem for CPS investigators – they will liable if they “wrongfully” remove a child, but they are also liable if they err by

²⁹ Holly Zachariah, *Prosecutors Must Heed Parental Rights, too*, COLUMBUS DISPATCH, Feb. 23, 2014, <http://www.dispatch.com/content/stories/local/2014/02/23/protectors-must-heed-parental-rights-too.html>.

not removing an abused one. The key, it would seem, to making that determination would pivot on the information they are able to obtain in the investigations. If workers do not conduct a thorough enough investigation due to time, information and resource constraints, this puts them at risk of liable suits. But so does too rigorous an investigation that may be perceived to be “unnecessarily intrusive.” It may be perceived as unnecessarily intrusive by parents, but perhaps not by the worker. The burden of professional responsibility on CPS workers is huge.^{30 31 32}

Thus, complaints on how child abuse investigations occur from all sides – from workers who feel as though their huge caseloads prevent them from seeing children regularly, who follow protocols that often prevent them from keeping children safe to parents who feel improperly accused. This situation has sparked debate, research, and commentary. A New York Times article by Bakalar³³ sums up the argument by asking if the child protective service is fine as it is, whether it outdated, if it should it be eliminated, or if it need to be revised in some way – and if so, what way?

CAN STATISTICAL THEORY SAVE THE DAY?

Most students and professionals cringe at the thought of taking statistics. The public is generally disinterested in them and just want the bottom line. But understanding the statistical concepts of Type I and Type II error can actually help us to figure out what is going on in this debate on child abuse and CPS worker behavior.

Statisticians, like child abuse investigators, are always concerned with the probability of error. Child abuse allegations have an emotional component to them; statistics do not.

³⁰ Marian Harris & Wanda Hackett, *Decision Points in Child Welfare: An Action Research Model to Address Disproportionality*, CHILD. AND YOUTH SERV. REV. 30 (2008), Oct. 3, 2007, at 199.

³¹ HELEN PAYNE & BRIAN LITTLECHILD, *ETHICAL PRACTICE AND THE ABUSE OF POWER IN SOCIAL RESPONSIBILITY* (1999).

³² Peter Rossi, John Schueman & Stephen Budde, *Understanding Child Maltreatment Decisions and Those Who Make Them*, CHAPIN HALL CTR. FOR CHILD., U. OF CHI. at 2 (1996).

³³ Nicholas Bakalar, *Child Abuse Investigations Didn't Reduce Risk, a Study Finds*, N.Y. TIMES, Oct. 11, 2010, <http://www.nytimes.com/2010/10/12/science/12child.html>.

Therefore, looking at the issue from a more abstract view may help to better understand decision making.

In a simplistic explanation, a null hypothesis assumes that a child is not being abused. An alternative hypothesis would assume that the child is abused. Statistics help us to make decisions about the truthfulness of those assumptions. If a child is not being abused and a decision is made that the child is safe, all is well. If a child is actually being abused and a decision is made that abuse has occurred, then the correct call has been made and action can be taken to better protect the child. So half of the time, correct decisions can be made.

The other half of the time, it's more complicated to make accurate decisions. A type I error, or alpha error, occurs when a null hypothesis is rejected. It is the process of incorrectly rejecting the null hypothesis in favor of the alternative. This would mean that the child is not abused (null hypothesis), and yet there is an allegation of abuse. A type II, or beta, error occurs when a false null hypothesis isn't rejected. If the null hypothesis states that the child is well-treated (no abuse) when the child is actually being abused, but the worker doesn't catch this and suggests that the child is fine when the child is abused, this is a type II error.

If a correct decision is made, everyone is happy and feels that justice has been achieved. If a child is not abused and there is no substantiation of abuse, then the family and CPS agree that no abuse has occurred. If a child has been abused and the investigation substantiates that abuse has occurred, then public feels that child protective services has done a good job by documenting that fact that abuse has indeed occurred. This is what child protective service workers strive for – a clean determination of abuse when it is present, and a clear indication that a child isn't abused when it is actually well-cared for.

The problem occurs in the other two cells of the model. When a type I error occurs during child abuse investigation, the investigator makes a judgment that there is abuse and none has actually occurred. When a type II error occurs, the child is abused but the investigator has insufficient information to make that determination. In either case, the public feels outraged that the child protective service system isn't doing its job.

Making Type I and Type II errors are common in the world of statistics, and in the world of child protection. People do the best they can to increase the amount of information so they can reduce the error, but the fact is that even in the best of situations, errors can be made. Figure 1 applies the Type I and II model to examples of child abuse:

Figure 1
Child Abuse Determinations

	Null HY is True (No Abuse)	Null HY is False (Abuse)
Reject Null HY	Type I error Predict abuse when child is not abused	Correct Outcome Predict abuse when child is abused
Fail to Reject Null HY	Correct Outcome Child is not abused and no abuse is predicted	Type II error Child is abused and child is not predicted to be abused

When a Type I error is made, parents may feel injustice has resulted when their child is deemed to be abused and they believe the child has been appropriately cared-for. The null hypothesis holds that no abuse has occurred, and there is a burden of responsibility on the child protective service worker to actually prove when abuse has occurred. There must be convincing evidence to warrant a decision of abuse. If the abuse was inflicted in an accidental manner the parents may not feel a determination of abuse is warranted. For instance, Taylor grew up in a loving family and was generally well-cared for. But her family was physical in their contact and would routinely grab her by the arm in play or to get her attention. When her arm was pulled out of the socket for the third time, physicians reported the parents for abuse. They were infuriated to be charged with abuse. Later, it was found that Taylor had a joint problem that contributed to her arm slipping out of the socket. There was a medical condition present that parents felt contributed to their daughter's arm problem and that minor pulling at the child wasn't abuse. Child protective service workers felt that pulling

so hard that the child's arm would come out of the socket was abusive, even if there were mitigating circumstances and no ill intent. In another case, the mother was chatting with friends in the kitchen while toddler Emily played on the floor and opened the bottom drawer of the oven and put her hands onto a hot broiler. The child received severe burns on her hands and the mother was reported for abuse. Elementary schooler Ryan reported to teachers that his father had roughed him up and called him names and the teachers called CPS to investigate. In all three cases, the parents were angry to be charged with abuse because they felt none had occurred. However, the reality is that all of them experienced unnecessary pain and suffering because of their parent's actions.

Type II errors occur when child protective workers are not able to obtain sufficient evidence to prove abuse that is actually occurring. If a CPS worker suspects abuse but cannot come up with definitive evidence to prove it, the worker may put the case on hold and see if further evidence will emerge over time. This is what happened in both the Baby Doe and the Tara children cases discussed earlier in this essay. If there is not compelling evidence to do something, workers wait to see if there are new reports or information; over time they may have no choice except to close the case – even when they suspect abuse. It's not enough to have a gut-level instinct abuse occurring; there must be confirmation data. While people may suspect abuse, unless the child is severely injured, the abuse can exist for a long time without being identified.

Parents get upset when workers make either Type I and Type II errors. There seems to be little applause for the countless times when CPS workers make clearly agreed-upon determinations of abuse or no abuse. In a Type I error, the child is not being hurt, but parents are brought up on charges of abuse. In this case, CPS workers have acted in the best interests of the child to protect the child when they felt there was enough evidence to warrant the decision of abuse. While this was upsetting to the parents, it protected the child. Parental upset with a Type I error is particularly common in a culture where children are regarded as parental property, and the allegation of

abuse would infer that the parents had failed to normative standards associated with being a “good parent.”

But Type II errors are worse than Type I errors for children. If a child has been abused and the abuse goes unrecognized, then the child continues to exist in harms’ way. Abuse can continue for a long period of time without any intervention, putting the child at increasing risk. If insufficient evidence exists to prove abuse, there is not much that a CPS worker can do. When the abuse results in children being killed, child protective service workers may be charged with negligence for not doing their job properly. If the data, or evidence, doesn’t stand at a level deemed significant to prove that abuse has definitely occurred, the worker made a statistically reasonable decision, even if it was an error.

Child protective workers are put in a challenging position when it comes to making a Type I or Type II error. They can never know, with 100% certainty, if their determination of abuse or safety is accurate. They are playing a game of probabilities, and they hope the data, or evidence, will be present for them to make an accurate determination of whether abuse has occurred or not. If they make a Type I error, the parents and public may get outraged. If they make a Type II error, then little public reaction may occur – until the child is seriously injured. It is at that point that the allegations are launched that they failed to do their job.

The more emotionally charged the case, the more likely allegations of error. Take, for instance, the case of child sexual abuse. If the child is being sexually abused and the alleged perpetrator is found to be abusive, the system seems to work well. If the child is not sexually abused and the alleged perpetrator is found to be innocent, again, the system is applauded for working. But if the child is sexually abused and the perpetrator is not accused, the system seems to have failed (Type II error). Yet no one may know the child is being abuse for a long time because the nature of sexual abuse is to keep it quiet. The most publicly and emotionally charged occurrences are the Type I error, when the child may not have been abused but the alleged perpetrator is formally identified as the abuser. To be charged as a sexual abuser can result in lifelong implications for

the alleged perpetrator. Adults have the power, prestige and resources to fight Type I errors; children are generally unable to fight when Type II errors result. Adult anger occurs because the stigma and legal problems associated with an inappropriate determination of abuse can be huge. The problem is that children's voices may not be heard at all, or may be muffled when they try to tell the truth.

SUMMARY

When CPS workers investigate suspected child abuse, they look at the data and play the odds, hoping that they make the right decision. In order to try to derive better decisions, a set of risk assessment tools are being created by CPS organizations. Some include the Child Endangerment Risk Assessment Protocol (CERAP) and the Structured Decision Making, referred to as the "Michigan model." The CERAP is 15-question "yes/no" checklist of risk factors for re-abuse, mitigating circumstances, and family strengths. After filling out the 15 questions and narrative components, a worker uses clinical judgment to check one of two boxes: "safe" or "unsafe." "Unsafe" means that a child is in imminent danger of moderate to severe harm. It is regarded as a consensus-based model because risk factors are derived from child welfare expert consensus, rather than evidence-based findings from research. Other Commonly used consensus-based models also include California Family Assessment Factor Analysis, known as the "California model," and Washington Risk Assessment Matrix, referred to as the "Washington model." The Structured Decision Making, or "Michigan model" is an actuarial model that measures risk factors that are statistically weighted to produce a high, moderate or low risk indicator. In general, actuarial approaches have been found to consistently outperform consensus based models.³⁴

³⁴ Discussion on these models can be found in the works by Christopher Baird and Dennis Wagner. *The Relative Validity of Actuarial - and Consensus-Based Risk Assessment Systems*. 22 CHILD. AND YOUTH SERV. REV., 839, 841-842(2000); Robert M. Dawes, David Faust, & Paul E. Meehl, *Statistical Prediction versus Clinical Prediction: Improving What Works*, in A HANDBOOK FOR DATA ANALYSIS IN THE BEHAV. SCI.: METHODOLOGICAL ISSUES 351, 351-361 (1992); George Falco & Barry Salovitz. *Clinical versus actuarial risk assessment in child protective services: Results from recent research*

While tools may help, ultimately a rights-based paradigm influences CPS worker decisions. Whose rights are more important in abuse investigations – the child or the parent? Sociologist Howard Becker asks the question – whose side are we on?³⁵ If we are on the side of the parent, then their outrage and embarrassment for being accused of being abusive – especially if they weren't – are understandable. Workers may cave when being accosted by adults and threatened with negative consequences if they choose to pursue prosecution for suspected abuse. This is especially the case when aggressive attorneys are involved. If we are on the side of the children, who are vulnerable and unable to advocate for themselves, then the proactive position to prevent future potential abuse seems warranted. When in doubt, child advocates should take the position of always protecting the child first. This puts the CPS worker directly into a potentially adversarial position with angry parents. In order for CPS workers to make a determination of abuse, the workers know ahead of time that there may be wrath to face, and yet they make their decision because they believe it is in the best interests of the child. It also requires collecting data that is incontrovertible, which is often hard to get in child abuse cases.

It would help if we viewed child abuse determination as partly a conceptual, data problem. If a worker has to make a call on protecting a child, or failing to protect a child, they may be better advised to make a Type I error than a Type II one. Of course, it would be ideal if no errors were made at all, but this is unlikely. However, chances of abuse would be lessened if parents, administrators, government leaders, and the public as a whole demanded improvements in the social systems that support

in New York, Paper presented at the 11TH ANN. CPS ROUNDTABLE ON RISK ASSESSMENT, S.F. (1979); John Fluke, Will Johnson & Myles Edwards, Outcome Evaluation: CERAP safety assessment technical report (Apr. 1997). CHILD. AND FAMILY RES. CTR., <http://www.cfric.illinois.edu/pubs/Pdf.files/cerap97.pdf>.; Eileen Gambrill & Aron Shlonsky. *The Need for Comprehensive Risk Management Systems in Child welfare*, 23 CHILD. AND YOUTH SERV. REV., 79, 79 - 82 (2001); J. Michael Tower, *Striking a Better Balance Between Child Safety and Parental Rights*, U. OF CHI. SCH. OF SOC. SERV. ADMIN., <http://ssa.uchicago.edu/striking-better-balance-between-child-safety-and-parental-rights>.

³⁵ HOWARD BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963). This book asks the question – whose side are we on?

children – including health care, social services, education, recreation, and the like.

The child care protection system may not be perfect. But it is the only system that exists to address the well-being of all children, rich and poor. Underfunding the CPS system, creating caseloads that are unmanageable, having a lack of community and social service resources to help families and children in distress, dealing with parental resistance, have having inadequate funding for comprehensive mental and physical health care needs all influence why the system doesn't always do as well as it should. Given its realistic constraints, it may be CPS workers and systems are doing about as well as they could. Perhaps when people fuss at child protective service workers for making mistakes, they should consider the larger picture of what they have to confront.

If you were a child protective service worker, which type of error would you rather accept – making adults angry to be accused of abuse or allowing a child to be continually hurt or dead? Understanding Type I and Type II errors may help us to make a more reasoned reaction to court decisions in child abuse cases.